IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.MC.No. 1808 of 2003()

C.C.NO.43/2002 OF JFCM, KOLENCHERRY

PETITIONER: ACCUSED NO.5

SARAMMA PAILY PILLAY, WIFE OF
PAILY PILLAY, AGED 56, PERIPILLIL
HOUSE, KOLENCHERRY.

BY ADV. SRI.PRAKASH P.GEORGE

RESPONDENTS: COMPLAINANT/ACCUSED NOS. 1 TO 4 AND 6 TO 7

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1. SOSAMMA, WIFE OF PAILY, AGED 61,
PUNACKAL VALIYA VEEDU, ELAMKULAM KARA,
KOLENCHERRY.

2. GEORGE, KURIKKAT HOUSE, ELAMKULAM KARA,
KOLENCHERRY.

3. ELIAMMA, WIFE OF JOSE, KURIKKAT HOUSE,
ELAMKULAM KARA, KOLENCHERRY.

4. K.M.VARGHESE, KODAKUTHI HOUSE,
ELAMKULAM KARA, KOLENCHERRY.

5. MATHU, KONATT HOUSE, ELAMKULAM KARA,
KOLENCHERRY.

6. KUNJUMON, KURISINKAL HOUSE,
ELAMKULAM KARA, KOLENCHERRY.

7. KUNJAMMA, KURISINKAL HOUSE, ELAMKULAM
KARA, KOLENCHERRY.

8. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.M.N.MANMADAN
PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05/10/2007, ALONG WITH CRL.M.C.NO.2424/2004 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.2079/2003 IN CRL.M.C..NO.1808/2003

CLOSED.

SD/- K.R.UDAYABHANU, JUDGE

05/10/2007

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K.R.UDAYABHANU, J.

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Crl.M.C.Nos.1808/2003-A & 2424/2004-C

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Dated this the 5th day of October, 2007

O R D E R

The petitioner in Crl.M.C.No.1808/2003 is accused No.5 and the petitioners in Crl.M.C.No.2424/2004 are accused Nos.6 to 7 in C.C.No.43/2002 in the file of the Judicial Magistrate of the First Class, Kolenchery, with respect to a private complaint filed by the first respondent alleging offences under Sections 143, 149, 427, 440, 447 and 506 I.P.C.

2. The petitioners in both the miscellaneous cases have sought for getting quashed the above proceedings alleging that the same has been instituted by the third defendant in O.S.No.17/1998 who is the first defendant in O.S.No.33/2000 which were instituted by the husband of the petitioner in Crl.M.C.No.1808/2003 seeking fixation of boundaries, permanent prohibitory injunction and recovery of possession. It is the case that in the above original suits, the dispute was with respect to a right of way. The husband of the petitioner in Crl.M.C.No.1808/2003 had purchased an item of property from the sister of the complainant by name, Mariyamma, and the

property involved is 83.732 cents and that the complainant had attempted to trespass into the property and also had destroyed the pathway to the property purchased by the husband of the petitioner in Crl.M.C.No.1808/2003. Annexure 4 and 5 in Crl.M.C.No.1808/2003 are the judgments in the above original suits which were decreed in favour of the husband of the petitioner in Crl.M.C.No.1808/2003. It is pointed out that as per Annexue '7' proceedings, the Amin was deputed by the civil court in order to execute the decree and the Amin had, along with the counsel and surveyor in pursuance of the order of the civil court had entered property and cleared the way. It is with respect to the same incident, i.e., the act of Amin that the complainant had instituted the criminal proceedings. The above is evident from the allegations in the complaint filed the copy of which is produced by the petitioner. The petitioners in Crl.M.C.No.2424/2004 are the other persons who accompanied the Amin and helped the Amin to clear the way, as per the order of the civil court. The petitioners have also produced the refer

report vide Annexure '9' in the matter on the complaint filed by the first respondent herein.

In the circumstances, I find that the proceedings initiated is nothing but abuse of the process of the court and, hence, liable to be set aside. In the result, the proceedings in C.C.No.43/2002 pending in the court of the Judicial Magistrate of the First Class, Kolenchery, is herewith quashed.

The criminal miscellaneous cases are allowed as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.M.C.Nos.1808/2003-A
& 2424/2004-C

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O R D E R

5th October, 2007